

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

GILBERT PHILIP CASTILLO, JR.,
et al.,

Defendants.

NO. C06-2540 TEH

ORDER GRANTING MOTION
TO WITHDRAW AS COUNSEL

This matter comes before the Court on Mr. Antonio L. Cortés's motion to withdraw as counsel for Defendant Gilbert Philip Castillo, Jr. This motion is currently set for hearing on April 21, 2008, but the Court finds the matter suitable for resolution without oral argument, as no opposition has been received and the time for filing an opposition has now passed. Consequently, the Court now VACATES the April 21, 2008 motion hearing date and GRANTS Mr. Cortés's motion to withdraw for the reasons discussed below.

California Rule of Professional Conduct 3-700(C)(1)(f) allows for permissive withdrawal of an attorney if his or her client "breaches an agreement or obligation to the [attorney] as to expenses or fees." In this case, Mr. Cortés filed a declaration, under penalty of perjury, stating that Mr. Castillo "failed to make the last two installments of the initial retainer he agreed to make" and that Mr. Castillo "now has a balance due on his account and is claiming inability to pay." Cortés Decl. ¶ 2. Mr. Castillo has submitted no declaration or other evidence disputing the truth of these statements. Thus, the California Rules of Professional Conduct allow for Mr. Cortés's permissive withdrawal from this case.

Before he can withdraw, however, Mr. Cortés must also comply with California Rule of Professional Conduct 3-700(A)(2), which provides that counsel "shall not withdraw from employment until [he or she] has taken reasonable steps to avoid reasonably foreseeable

1 prejudice to the rights of the client, including giving due notice to the client, allowing time
2 for employment of other counsel, complying with rule 3-700(D), and complying with
3 applicable laws and rules.” Rule 3-700(D), in turn, requires counsel to release all client
4 property to the client, including files, pleadings, exhibits, transcripts, and other materials.
5 Similarly, Civil Local Rule 11-5(a) provides that counsel may not withdraw “until relieved
6 by order of Court after written notice has been given reasonably in advance to the client and
7 to all other parties who have appeared in the case.” The Court finds that Mr. Cortés has
8 given ample notice in this case to both Mr. Castillo and counsel for Plaintiff United States
9 Commodity Futures Trading Commission. Because Mr. Castillo has already signed a
10 settlement agreement in this case, and this matter is only awaiting formal approval of the
11 settlement by the Commission, Mr. Cortés’s withdrawal also will not prejudice the rights of
12 his client.

13 Accordingly, with good cause appearing, IT IS HEREBY ORDERED that
14 Mr. Cortés’s motion to withdraw is GRANTED, subject to the following conditions:

15 1. Mr. Cortés shall promptly comply with the requirements of California Rule of
16 Professional Conduct 3-700(D).

17 2. Pursuant to Civil Local Rule 11-5(b), papers shall continue to be served on
18 Mr. Cortés for forwarding purposes unless and until Mr. Castillo appears by other counsel or
19 pro se. Mr. Cortés shall provide written notification to Mr. Castillo of this condition.
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21 **IT IS SO ORDERED.**

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23 Dated: 04/10/08



24 THELTON E. HENDERSON, JUDGE
25 UNITED STATES DISTRICT COURT
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